HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.303 of 2007

Between:

M/s.Cavim Reality (P) Ltd.,
Rep. by its Director, Santosh Shroff,
Mumbai & others.

… Appellants

And

The Station House Officer,
Adoni I Town Police Station and another

… Respondents

Counsel for the appellants: Shri O. Manohar Reddy

::JUDGMENT::

April 23, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 28-4-2006 passed by the learned Single Judge whereby he declined the appellant's prayer for quashing the proceedings of Crime No.74/2004 registered at I Town Police Station, Adoni, District Kurnool at the instance of respondent No.2 – Sree Rayalaseema Paper Mills

Limited.

Respondent No.2 is a company registered under the Companies Act, 1956 having its head office at Adoni. It acquired properties at different places in the country including Mumbai and established its regional office at Mumbai. In 1990-91, respondent No.2 became sick and closed down its operations at Mumbai. Thereafter, the property situated at Mumbai was leased out to M/s.Sanghvi Builders, represented by its Proprietor
Sri Ramlal M. Shah and M/s. Pratap Suppliers, represented by its Proprietor Sri P. Nagesh, who in turn sublet the property to M/s.Merzario Shipping Agencies Private Limited.

On 9-12-2003, respondent No.2 filed a complaint in the Court of Judicial Magistrate of First Class, Adoni by alleging that with the object of grabbing its property situated at Mumbai, the appellants fabricated a Memorandum of Understanding dated
21-10-1994 showing as if M/s.Pratap Suppliers represented by
Shri G. Rangaiah and respondent No.2 represented by Sri T.G. Sreekanth had agreed to put them in possession. It was also alleged that Shri G. Rangaiah has nothing to do with the affairs of M/s.Pratap Suppliers and the signatures of Sri T.G. Sreekanth were forged. The learned Judicial Magistrate forwarded the complaint to I Town Police Station where it was registered as Crime No.74/2004 for offences under Sections 420, 446 and 447 of the Indian Penal Code.

In the writ petition filed by them, the appellants challenged the registration of case mainly on the ground that Judicial Magistrate of First Class, Adoni did not have the territorial jurisdiction to entertain the complaint in respect of the crime allegedly committed in respect of the property situated at Mumbai and only the Mumbai police could register the case. Another plea taken by the appellant was that the complaint lodged by respondent No.2 does not disclose commission

of any offence and the learned Judicial Magistrate gravely erred by forwarding the same to respondent No.1 for registration of criminal case.

The learned Single Judge referred to the definition of the term "local jurisdiction" (Section 2 (j)) and Sections 177, 179 and 200 of the Code of Criminal Procedure, 1973 and held that there was no warrant for quashing the crime registered against the appellants. The learned Single Judge referred to the judgments of the Supreme Court in **Trisuns Chemical Industry v. Rajesh Agarwal**[1] and **Satvinder Kaur v. State (Govt. of NCT of Delhi)**[2] and held that the case registered against the appellants cannot be quashed only on the ground that Judicial Magistrate of First Class, Adoni did not have the jurisdiction to entertain the complaint. The learned Single Judge observed that the complaint lodged by respondent No.2 did disclose commission of an offence and, therefore, the proceedings of the criminal case cannot be quashed by the High Court in exercise of its power under Article 226 of the Constitution.

Shri O. Manohar Reddy argued that the order impugned in the appeal is liable to be set aside because the reasons assigned by the learned Single Judge for dismissing the writ petition are legally unsustainable. Learned counsel emphasized that Judicial Magistrate of First Class, Adoni did not have the jurisdiction to entertain the complaint lodged by respondent No.2 in respect of the property situated at Mumbai and, therefore, he could not have forwarded the complaint to respondent No.1 for registration of case and investigation.

We have considered the submissions and arguments of the learned counsel, but have not felt persuaded to agree with him that Judicial Magistrate of First Class, Adoni did not have the jurisdiction

to entertain the complaint lodged by respondent No.2. In **Trisuns Chemical Industry v. Rajesh Agarwal** (supra), the Supreme Court considered a question similar to the one raised in this appeal and answered the same in negative. The facts of that case were that the appellant company filed a complaint before the Judicial Magistrate of First Class, Gandhidham, Gujarat alleging offences of cheating against another company located at Indoor and its Directors. The Magistrate forwarded the complaint under Section 156 (3) Cr.P.C. for investigation. The accused then moved the High Court of Gujarat under Section 482 Cr.P.C. and succeeded in persuading the learned Single Judge of that Court to quash the complaint on the ground that the Judicial Magistrate at Gandhidham did not have the jurisdiction to entertain the complaint. While reversing the order of the Gujarat High Court, the Supreme Court referred to the provisions of Sections 177, 190 and 193 Cr.P.C. and laid down the following propositions:

1) The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this chapter". There are 9 sections in Chapter XIV most of which contain one or other restriction imposed on the power of a First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these: "Except as hereinafter provided...." Those words are now replaced by "Subject to the provisions of this chapter...." Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence — of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Anyway

that is a different matter.

2) The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier.

In **Satvinder Kaur v. State (Govt. of NCT of Delhi)** (supra), the Supreme Court reversed the order of Delhi High Court which had quashed the FIR lodged by the appellant under Sections 406 and 498-A IPC and held as under:

> "It is true that territorial jurisdiction also is prescribed under sub-section (1) to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170. Section 170 specifically provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having

jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it."

In view of the law laid down in the above noted judgments, it must be held that the learned Single Judge did not commit any error by refusing to quash the proceedings of Crime No.74/2004 only on the ground that Judicial Magistrate of First Class, Adoni did not have the jurisdiction to entertain the complaint lodged by respondent No.2 for offences committed in relation to the property situated at Mumbai.

We are further of the view that the allegation made by respondent No.2 that the document was fabricated by Sri G. Rangaiah at Adoni was sufficient to clothe the Judicial Magistrate of First Class at Adoni to order registration of case and investigation thereof by the concerned police authorities. If, after conducting investigation, respondent No.1 comes to the conclusion that no offence has been committed, then, he may file report for closure of the case, but, at this stage, it is impossible to record a finding that the complaint lodged by respondent No.2 is vexatious or that it does not disclose commission of any offence whatsoever so as to warrant judicial interdiction at this stage.

I n **State of Haryana v Bajan Lal**[3], the Supreme Court considered the scope of the High Court's power under Section 482 of Cr.P.C and Article 226 of the Constitution to quash the FIR registered against the respondent, referred to several judicial precedents including those of **R.P.Kapoor v. State of Punjab**[4], **State of Bihar v. J.A.C. Saldanha**[5] and **State of West Bengal v. Swapan Kumar Guha**[6] and ruled that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the

proceedings without allowing the investigating agency to complete its task. The Supreme Court also identified the cases in which power under Article 226 of the Constitution or Section 482 Cr.P.C. could be used for quashing the proceedings. These are:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused

and with a view to spite him due to private and personal grudge."

In **Commissioner of Prohibition & Excise, Hyderabad v. Balaji Traders**[7], a Division Bench of this Court, of which one of us was a member, considered the ambit and reach of the High Court's inherent power under Article 226 of the Constitution and Section 482 Cr.P.C. to quash the complaint/First Information Report or the proceedings of criminal case, referred to the judgments of the Supreme Court in **R.P. Kapur v. State of Punjab** (supra), **State of Haryana v. Bajan Lal** (supra), **State of Bihar v. P.P.Sharma**[8], **State of Maharashtra v. Ishwar Piraji Kalpatri**[9], **State of Karnataka v. M. Devendrappa**[10], **A.V. Mohan Rao v. M. Kishan Rao**[11], **State of Orissa v. Saroj Kumar Sahoo**[12] and laid down the following proposition:

"The ratio of the above noted judgments is that in exercise of its powers under Article 226 of the Constitution or Section 482 of Cr.P.C., the High Court should be extremely slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have the right to see that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed under Article 226 of the Constitution or Section 482

> Cr.P.C., for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands of and allow the investigating agency to complete the investigation without any fetter. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. Interim orders passed by the High Court in such matters, as a matter of course, have great adverse impact on the society. Those accused of committing crimes get emboldened and majority of citizens are forced to think that the judicial process can be used and abused by the law breakers to their advantage."

If the appellant's case is examined in the light of the legal principles laid down in the judgments noted above, we do not find any justification to entertain their prayer for quashing the proceedings of Crime No.74/2004. Although the property, which is subject matter of the crime, is situated at Mumbai, the allegation made by respondent No.2 that the documents for its transfer had been fabricated by Shri G. Rangaiah at Adoni cannot be termed as frivolous or vexatious warranting judicial interdiction at this stage of the case. In our considered view, the appellants' case does not fall within the ambit of any of the exceptions carved out in **Bajan Lal**'s case (supra) and the learned Single Judge did not commit any error by refusing to entertain their prayer for quashing the proceedings of

Crime No.74 of 2004.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.577 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

April 23, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (1999) 8 SCC 686
[2] (1999) 8 SCC 728
[3] 1992 Supp (1) SCC 335
[4] AIR 1960 SC 866
[5] (1980) 1 SCC 554
[6] (1982) 1 SCC 561
[7] 2006 (6) ALD 63 (DB)
[8] 1992 Supp. (1) SCC 335
[9] (1996) 1 SCC 542
[10] (2002) 3 SCC 89
[11] (2002) 6 SCC 174
[12] (2005) 13 SCC 540